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			ART UNIT 1782	PAPER NUMBER
			NOTIFICATION DATE 06/10/2010	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

erikav@patent2u.co.il
liat@patent2u.co.il

Office Action Summary	Application No. 10/524,279	Applicant(s) SAR-EL ET AL.	
	Examiner VIREN THAKUR	Art Unit 1782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 March 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 23, 2010 has been entered.

Response to Amendment

2. As a result of the amendment to the claims, the rejection of claim 1 under 35 U.S.C 112, second paragraph has been withdrawn.

3. As a result of the cancellation of claim 6, the rejection of claim 6 under 35 U.S.C. 112, second paragraph has been withdrawn.

4. As a result of the amendment to claim 5, the rejection of claim 5 under 35 U.S.C. 112, second paragraph has been withdrawn.

Claim Rejections - 35 USC § 103

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5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. **Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenk (US 2183799) in view of Tinklenberg et al. (US 6058639) and in further view of Sjostedt (US 6381890), Stehouwer(US 4407082) and Recchia et al. (US 5509994), and in further view of Ruell (US 4171766), Chamberlain (EP673853), Parlo (US 5429393) and in further view of Raske (DE2604073), Fukami (US 5799375) and Malosse (FR 2463959).**

Regarding claims 1 and 2, Wenk teaches the steps of winding a band around a food product and securing a tag onto the band which marks that the food is authentic. For instance, Wenk teaches that the band, which is pierced through the food product, indicates that the product is kosher (figure 1 and page 2, left column, lines 25-27).

Claim 1 differs from Wenk in the particular steps for associating the kosher tag comprising indicia to the band which has been wrapped around the food product. Specifically, this entails winding the band around the product and an anvil, then feeding a hologram between the band and a welding means, welding the hologram onto the band and then retracting the welding means and the anvil from the band.

Regarding these limitations, it is noted that Tinklenberg et al. has been relied on to teach that it has been conventional in the art to *first* wrap a band around the food product and then apply a marking tag to the wrapped band (figure 5). Wenk and Tinklenberg are similar in that they both teach adding a tag to identify food, wherein the tag has been secured to the band. Therefore, to first wrap the food with the band and then associate the tag comprising indicia to the wrapping band (i.e. the particular order in which the tag comprising indicia was associated with the wrapping band), would have been an obvious rearrangement of steps that would have been an obvious matter of choice and/or design to one having ordinary skill in the art.

Regarding the particular method by which to associate the indicia comprising tag to the band, it is noted that claim 1 recites the steps of coupling an anvil to the surface of the product and then winding the band around the product and anvil and welding a hologram, which is positioned between the tip of a welder and the band. It is noted that the art is replete with different conventional expedients for associating an indicia comprising tag to a wrapping band. For instance, Tinklenberg et al. teaches employing a particular type of hook, positioned between the food product and the band, for the purpose of securing the tag to the band. Wenk teaches securing another tag

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comprising a loop to the band. Sjostedt (US 6381890) teaches using a magnet to secure a tag after the band has been wrapped around a food product (see figure 1). Stehouwer (US 4407082) teaches employing ultrasonic welding for associating a tag with a tie (i.e. band), for the purpose of preventing separation of the tag with the tie (column 2, lines 20-47). Similarly, Recchia et al. (US 5509994) teaches wrapping a band around a product, and employing ultrasonic welding using an anvil which has been placed between the products and the band, for the purpose of providing an ultrasonic seal (see figure 1, items 36, 38 and figure 11, items 34, 36, 38 and the tape therebetween; column 4, lines 35-48). Recchia et al. further evidences employing the positioning of an anvil between the product and the band, for providing ultrasonic welding. It is noted that applicants' also appear to employ ultrasonic welding for the purpose of securing the tag to the band. The art has thus recognized several conventional techniques for associating an identification tag to a band that has been secured to a product, such as using adhesives, hooks, another hanging band and ultrasonic welding. The art further teaches that ultrasonic welding prevents separation of the identification tag from the band. To thus modify the combination and employ ultrasonic welding would thus have been an obvious substitution of one conventional expedient for securing an identification tag to a band wrapped around a product, for another conventional expedient for securing an identification tag to a band that has been wrapped around a product. In view of Stehouwer, for instance, ultrasonic welding would have been advantageous since it prevents the tag from being removed from the band.

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Regarding employing ultrasonic welding, which Stehouwer teaches prevents separation of the tag from the wrapping band, it is noted that, Recchia et al., as well as Spratt teach that an anvil is required for the purpose of being able to employ an ultrasonic weld. For instance, Spratt teaches this concept in figure 1, item 28). In this case, the workpiece would have been placed between the welding means (22) and the anvil (28). Clearly, the purpose of the anvil is to provide the support for applying the weld for securing the two items together. Recchia et al. even teaches that the anvil would have been between the wrapping band and the product which was to be wrapped. Thus, when employing ultrasonic welding to secure a tag to a band, to therefore position the anvil behind the band such that the welding means and the anvil would sandwich the workpiece to be welded would have been obvious to one having ordinary skill in the art, as taught by Recchia et al. and Spratt, since this has been the conventional technique for using ultrasonic welding for securing the tag to the band. Regarding the specific location of the anvil between the product and the band, it is noted that Recchia et al. teaches that this has been a conventional position for the anvil, depending on the particular location at which the ultrasonic weld was to be made. In view of the fact that the art clearly teaches employing an anvil for ultrasonic welding, to thus place the anvil between the band and the product would have been an obvious function of the desired location of the weld, which would have been an obvious matter of choice and/or design, as well.

Regarding the step of feeding a hologram to a location between the tip of a welding means and the band, it is noted that once the art recognized using ultrasonic

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welding for the purpose of securing a tag to a band, it would have been obvious that the tag to be welded to the band would have to have been placed between the welding apparatus and the band to which it would have been welded. Regarding the particular use of a hologram, it is noted that Ruell teaches the concept of applying a hologram onto a card, wherein it is impossible to separate the identification card from the hologram without visible destruction of one or the other (column 2, lines 3-8). Ruell thus teaches that it was conventional in the art to weld holograms onto a substrate for the purpose of providing added authenticity of the matter printed on the marking tag (column 1, lines 56-66). Additionally, Chamberlain (EP673853) teaches using holographic labels for food packaging for the purpose of providing a marker of authenticity (see abstract). Additionally, Parlo (US 5429393) teaches that it has been conventional to provide holograms for identification tags which facilitate providing clear identification of the item on which the tag has been placed (see column 7, line 35 to column 8, line 37). Since Wenk teaches that a printed indicia (1) for marking and identification purposes has been provided on one side of the marking tag, to further modify the marking tag, and employ a hologram would have been obvious to one having ordinary skill in the art for the purpose of providing an identification tag that is impossible to remove without destroying the tag or the hologram, and which provides authenticity as to the product being marked.

Regarding the steps of retracting the welder and the retrieving the anvil, these also would have been obvious steps once the tag/hologram has been secured to the band by ultrasonic welding. That is, it would have been obvious to have retrieved the

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anvil from between the product and the band for the identification tag, for the purpose of being able to use the welding and anvil means for welding together another product.

Clearly, the only purpose of employing an anvil is for using ultrasonic welding to weld the tag to the band. Therefore, to remove the anvil when it would no longer have been necessary would have been obvious to one having ordinary skill in the art. In any case, it is noted that Raske has been relied on as further evidence that it has been conventional to place an anvil (5) in contact with the products to be welded, with the ultrasonic welder (11) on the opposite side of the products to be welded. Raske further teaches that the anvil is subsequently removed and thus retrieved after welding of the workpieces together (see the English abstract). It is thus noted that the purpose of the extracting/retrieving step is to remove the anvil from welding point, after the welding has been completed. When using ultrasonic welding to weld two workpieces together, the art thus teaches that the removal/retrieval of the anvil from the welding point has been a recognized and conventional step associated with ultrasonic welding.

Although the patentability of the method cannot be predicated on the particular apparatus employed to perform the method, it is noted that devices for winding a band around a product have been conventionally employed for their art recognized function, as evidenced by Fukumi (figure 2) and Recchia et al. Malosse further evidences automatic devices for applying bands through and around a meat product. Regarding the advancing of the device, it would have been obvious to the ordinarily skilled artisan that the device to wrap a band around the product would be required to be advanced toward the product for the purpose of applying a band to the product.

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Regarding the use of plastic bands as recited in claim 1, it is noted that Wenk teaches the use of metal type bands. Nevertheless, Fukumi (column 7, lines 32-34) teaches the use of plastic wrapping bands. Therefore, once the art recognized employing plastic for the wrapping band, the particular material of construction of the wrapping band would have been an obvious matter of choice and/or design to the ordinarily skilled artisan.

8. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 2, above and in further view of Wescombe (US 6226911), Merle (US 1657865) and Propst et al. (US 3952438).

Regarding claim 5, it is noted that Wenk teaches winding the band around and through the meat product. The band thus pierces the meat product. Claim 5 recites wherein "said advancing of said device for wrapping bands comprises piercing said product to form an aperture." It is noted that this limitation does not exclude other devices for performing the piercing of the product. It appears that the step of "winding said band around said product and said anvil means is executed through the aperture formed by said piercing" encompasses the winding occurring simultaneously or after the piercing. If the claim is construed to read on simultaneous piercing and winding, Wenk teaches this concept. If the claim is construed to read on the winding occurring after the piercing, then the claim differs from Wenk in this regard.

It is noted however, that Wescombe, for instance, teaches a method for marking a meat product (column 1, lines 7-8) with a tag, wherein the meat is first pierced and after which, a marking tag has been threaded through the opening (column 1, lines 26-34; column 2, lines 4-10). For instance, Wescombe further teaches that the method further comprises wherein the opening through which the tag is inserted is maintained open so that the tag can be inserted there-through (column 5, line 38). Wescombe also teaches that this can be a mechanical process (column 5, line 18). Further to this point, Merle also teaches first piercing the product and then threading a marking tag there-through (page 2, left column, lines 27-29). Also, Propst et al. teaches that a device to apply a marking tag to a product is advanced to the product and pierces the product and after piercing threads through the marking tag (figures 21, 25 and 26). To therefore wind the band through the product as a result of the step of first piercing by advancing a device for wrapping bands, as taught by Propst et al. would have been an obvious to one having ordinary skill in the art, for the purpose of facilitating threading of the band through the meat product.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 2, above and in further view of Swett (US 3021630) and Diamond (BE839165) and in further view of Sayyadi et al. (US 5425826) and Tamura et al. (US 5947364).

Claim 7 recites that the retracting of the welding means is cyclical in order to arrive at a subsequent batch of said products intended to be marked. As discussed

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above, it is noted that the patentability of the method cannot be predicated on the particular apparatus employed to perform the method but rather is predicated on the particular steps performed. In this case, the art teaches the concept of providing a mechanical system for marking a product, as evidenced by Spratt Jr. Malosse also evidences a mechanical system wherein the marking of the meat occurs in a recurring manner so that once a first meat product is marked with a tag, a second meat product is moved into position to be tagged. It is further noted that the concept of broadly providing an automatic mechanism to replace steps that have been conventionally manually performed for achieving the same result would not be sufficient to distinguish over the prior art (see MPEP 2144.04 II). In any case, Swett further teaches the concept of providing a device for marking products wherein the heat sealing of the marking to the meat is performed in a cyclical manner so that subsequent meat products can be marked. Diamond (abstract) further teaches that it was conventional in the art to implement automated marking systems for meat products. Using an automated welding apparatus for welding an identification tag to a metal wire, wherein the welder is retracted cyclically (i.e. periodically) has been further evidenced by Sayyadi et al. (figure 1 and abstract, for instance). Also, Tamura et al. further teaches a production line type welding operation, wherein the welder moves in a cyclical manner for the purpose of providing welding to subsequent products placed under the welder (figure 2, item 6 and column 2, lines 1-15). Therefore, once the art recognized the concept of providing a continuous or semi-continuous method for applying a marking tag to a product, in a production style manner, to therefore retract a welder in a cyclical

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manner would have been obvious for the purpose of allowing for the subsequent welding of another product.

Response to Arguments

10. On page 4 of the response, applicants urge that none of the cited references relate to a tag comprising a hologram for marking products attesting to their authentication.

This argument has been considered but is not persuasive to overcome the rejections. It is noted that the art clearly recognized applicants' purpose for providing authenticity to a label, as evidenced by Ruell. In any case, Chamberlain further teaches using holographic labeling with food packaging for the purpose of providing a marker of authenticity (see abstract). Additionally, Parlo also teaches that it has been conventional to provide holograms for identification tags which facilitate providing clear identification of the item on which the tag has been placed (see column 7, line 35 to column 8, line 37). Therefore, the art clearly teaches providing identification tagging using holograms, for the purpose of indicating a products authenticity as well as tamper evidence and improved visibility of the tag. Since Wenk clearly teaches the use of a label to mark a food product as kosher, to thus modify the label and employ a hologram to mark the product kosher would have been obvious to one having ordinary skill in the art, for the purpose of providing an indication that the label was authentic, providing a

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degree of tamper evidence as well as for providing improved visibility of the particular label.

11. On page 5 of the response, applicants urge that there is no mention of use of an anvil as there is no need for such in the application of Ruell because the card receiving the hologram is quite different than a food product. This argument is not persuasive. It is noted that Ruell teaches ultrasonic welding of the hologram. The references to Recchia et al. and Spratt further clearly teach that ultrasonic welding requires the use of an anvil for supporting the welder and thus being able to apply the ultrasonic weld.

12. Further on page 5 of the response, applicants urge that the citations which mention an anvil are used to support the band/tag during welding of the band/tag to itself and not to support the welding of the hologram to the band. This argument is not persuasive. It is noted that Stehouwer, for instance, already teaches ultrasonic welding of a tag the band that is wrapped around an article. Recchia et al. further teach the particular positioning of the anvil.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6231579 discloses piercing a workpiece to secure a tag thereon, using the sharpened portion of the tag (see figure 1). US 5137200 discloses

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using ultrasonic welding for welding large, awkward or odd-shaped work pieces (see abstract). US 1011911 discloses using a plate secured to a clip for providing an identification tag (figure 4 and lines 51-56) instead of a hanging tag as shown in figure 2.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VIREN THAKUR whose telephone number is (571)272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Viren Thakur/
Examiner, Art Unit 1782